

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CLIFFORD MARTIN,

Civ. No. 05-6321-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying his application for disability insurance benefits. Agreeing that the decision must be reversed, the Commissioner filed a motion for remand for further administrative proceedings. Further proceedings would serve no useful purpose. The decision of the Commissioner is therefore reversed, and plaintiff's application is remanded for an award of benefits.

Discussion

The administrative law judge (ALJ) cited insufficient reasons to reject Dr. Swena's opinions that plaintiff is limited

to less than sedentary work, would miss four or more days of work per month due to impairments, and needs to lie down 1-2 hours during the day to rest. (Tr. 302-03). The ALJ cited Dr. Swena's general repetition of plaintiff's reports, lack of objective tests or findings supporting an inability to work, and the fact that an insurance company denied short term disability insurance benefits after reviewing letters and medical records from Dr. Swena. Because of the nature of chronic fatigue syndrome (CFS) and fibromyalgia, it is unsurprising that physical findings do not support a particular degree of severity of symptoms. As the ALJ recognized, the Commissioner previously found plaintiff disabled from 1992-2002.

The ALJ did not state clear and convincing reasons to reject plaintiff's allegations, and made no finding of malingering. The ALJ cited lack of physical findings of rapid deterioration, and activities that do not amount to an inability to work. (Tr. 22-23). Medical evidence documents relapse of plaintiff's CFS after an influenza-like illness in the spring of 2003. (Tr. 196). Regarding activities, the ALJ notably did not find that plaintiff's limited art, fishing, camping and household activities are inconsistent with a claimed inability to perform competitive work at the sedentary level. Plaintiff's activities are not clearly and convincingly inconsistent with his claimed disabilities.

The insurer's June 11, 2003 letter indicates that it denied

short term disability benefits because reviewed "physical and diagnostic findings . . . do not support a functional impairment which would prevent [plaintiff] from performing [his] normal occupational requirements." (Tr. 74). Without other evidence, the ALJ cannot favor the opinion of the insurer over the treating physician. As noted, the ALJ's finding regarding plaintiff's credibility is insufficient. Further, nothing indicates that the insurer considered the evidence and performed the evaluation required of the ALJ by the Social Security regulations. Finally, the insurer rendered its decision without consideration of Dr. Swena's subsequent opinions, which the ALJ improperly rejected.

The Commissioner does not point to substantial evidence which could support findings rejecting plaintiff's testimony and Dr. Swena's opinions. The court does not find such evidence in the record. Remand for payment of benefits is appropriate in this case.

Conclusion

Based on the foregoing, the decision of the Commissioner is reversed. Plaintiff's application is remanded to the Commissioner for an award of benefits.

IT IS SO ORDERED.

DATED this 4th day of December, 2006.

s/ Michael R. Hogan
United States District Judge